

BILL

No. 126

An Act to amend *The Seizure of Criminal Property Act, 2009*

(Assented to)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Seizure of Criminal Property Amendment Act, 2013 (No. 2)*.

S.S. 2009, c.S-46.002 amended

2 *The Seizure of Criminal Property Act, 2009* is amended in the manner set forth in this Act.

Section 2 amended

3 Section 2 is amended:

(a) by adding the following clause after clause (a):

“(a.1) **‘business day’** means a day other than a Saturday, Sunday or holiday”;

(b) by adding the following clause after clause (k):

“(k.1) **‘ministry’** means the ministry over which the minister presides”;
and

(c) in subclause (o)(ii) by adding “or notice of commencement of administrative forfeiture proceedings was registered pursuant to subsection 10.2(2)” **after** “section 5”.

New Part II.1

4 The following Part is added after Part II:

“PART II.1 Administrative Forfeiture Proceedings

“Interpretation

10.1 In this Part:

(a) **‘deadline date’** means the date specified in a notice of administrative forfeiture proceedings given pursuant to sections 10.3 and 10.4 by which persons are required to file a notice of dispute of forfeiture of subject property;

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- (b) **‘law enforcement agency’** means:
 - (i) a police service or regional police service as defined in *The Police Act, 1990*;
 - (ii) the Royal Canadian Mounted Police; or
 - (iii) a prescribed agency or organization;
- (c) **‘notice of dispute’** means a notice of dispute pursuant to section 10.6;
- (d) **‘subject property’** means property that is the subject of administrative forfeiture proceedings pursuant to this Part.

“Commencement of proceedings

10.2(1) The director may commence administrative forfeiture proceedings against property if:

- (a) the director is satisfied that the property is proceeds of unlawful activity or an instrument of unlawful activity;
 - (b) the property is personal property;
 - (c) the property has been seized by a law enforcement agency and is being held by or on behalf of that agency;
 - (d) the director has reason to believe that the fair market value of the property is less than the prescribed amount;
 - (e) no other person has a prior registered interest in the property; and
 - (f) the property is not the subject of an application for a forfeiture order pursuant to Part II.
- (2) In order to commence administrative forfeiture proceedings, the director shall:
- (a) register a notice of the administrative forfeiture proceedings against the subject property in the personal property registry by submitting a financing statement for registration in the personal property registry in accordance with *The Personal Property Security Act, 1993*; and
 - (b) give notice of the administrative forfeiture proceedings in accordance with sections 10.3 and 10.4.
- (3) Part IV of *The Personal Property Security Act, 1993* applies, with any necessary modification, to the registration of a financing statement pursuant to this section.
- (4) The financing statement mentioned in subsection (2) must:
- (a) name as the debtor the person who owns or is in possession of the subject property;
 - (b) name the director as the secured party; and
 - (c) specify as the collateral the subject property.

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(5) If an administrative forfeiture proceeding is discontinued, the notice registered pursuant to subsection (2) must be discharged by the director as soon as is practicable.

(6) If the director commences administrative forfeiture proceedings pursuant to this section and subsequently files an application for a forfeiture order respecting personal property pursuant to Part II:

(a) the director is not required to submit a financing statement for registration in the personal property registry pursuant to subsection 5(2) if the director has already submitted a financing statement for registration pursuant to this section; and

(b) the notice registered pursuant to this section must not be discharged except in accordance with subsection 5(5).

(7) An administrative forfeiture proceeding is valid notwithstanding any failure to comply with this section.

“Notice to interested persons

10.3(1) The director must give written notice of administrative forfeiture proceedings against the subject property to:

(a) the person from whom the subject property was seized;

(b) the law enforcement agency that seized the subject property; and

(c) any other person who the director believes may have an interest in the subject property.

(2) A notice pursuant to this section must include the following:

(a) a description of the subject property;

(b) the date the subject property was seized and the place of seizure;

(c) the basis on which the director seeks forfeiture of the subject property;

(d) a statement that the subject property may be forfeited to the Crown;

(e) a statement that a person who intends to oppose forfeiture of the subject property must submit a written notice of dispute to the director at an address set out in the notice by a deadline date specified in the notice;

(f) the deadline date for submitting a notice of dispute to the director, which must be at least 30 days after the later of:

(i) the date that notice of administrative forfeiture proceedings was received or is deemed to have been received by all persons required to be given notice pursuant to subsection (1); and

(ii) the date that public notice of administrative forfeiture proceedings was first given pursuant to section 10.4.

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(3) A notice pursuant to this section may be given to a person by personally serving the person with the notice or by sending a copy of the notice by registered mail to the person's last known address given to the law enforcement agency that seized the subject property.

(4) A notice pursuant to this section sent by registered mail pursuant to subsection (3) is deemed to have been served on the tenth business day after the date of its mailing.

(5) Notwithstanding subsection (4), if the director or other person serving a notice in accordance with subsection (3) has received a signed post office receipt and:

(a) the delivery date shown on the signed post office receipt is a date earlier than the tenth business day after the date of its mailing, the notice is deemed to have been served on the delivery date; or

(b) the delivery date is not shown on the signed post office receipt but the signed post office receipt is received by the director or other person on a date earlier than the tenth business day after the date of its mailing, the notice is deemed to have been served on the day on which the signed post office receipt is received by the director or other person.

“Public notice of administrative forfeiture proceedings

10.4(1) The director shall give public notice of administrative forfeiture proceedings against the subject property by publishing notice of the proceedings on the ministry's website.

(2) A notice pursuant to subsection (1) must include the following:

(a) a description of the subject property;

(b) the date the subject property was seized and the place of seizure;

(c) the basis on which the director seeks forfeiture of the subject property;

(d) a statement that the subject property may be forfeited to the Crown;

(e) a statement that a person who intends to oppose forfeiture of the subject property must submit a written notice of dispute to the director at an address set out in the notice by the deadline date specified in the notice;

(f) the deadline date for submitting a notice of dispute to the director, which must be at least 30 days after the later of:

(i) the date that notice of administrative forfeiture proceedings was received or is deemed to have been received by all persons required to be given notice pursuant to subsection 10.3(1); and

(ii) the date that public notice of administrative forfeiture proceedings was first given pursuant to this section.

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“Agency to maintain possession of subject property

10.5(1) Subject to subsection (2), when a law enforcement agency receives a notice of administrative forfeiture proceedings from the director pursuant to clause 10.3(1)(b), it must maintain the subject property and ensure that the property is not released to any person, despite any other claim, interest or right of possession in the property, until it receives:

- (a) a notice from the director indicating that administrative forfeiture proceedings against the subject property have been discontinued;
- (b) a notice of forfeiture from the director pursuant to subsection 10.8(4) that confirms that the subject property has been forfeited to the Crown; or
- (c) notice of an order made pursuant to Part II in relation to the subject property that forfeits the property to the Crown or otherwise deals with the possession of the property.

(2) A law enforcement agency may take any action in relation to the subject property if it has received prior authorization from the director.

“Disputing administrative forfeiture

10.6(1) A person who claims to have an interest in the subject property may oppose forfeiture of the property by filing a notice of dispute with the director in the prescribed form.

(2) The notice of dispute must be received by the director on or before the deadline date.

“Director’s response to notice of dispute

10.7(1) If the director receives a notice of dispute in the prescribed form on or before the deadline date, he or she must, within 60 days after the deadline date:

- (a) apply for a forfeiture order against the property pursuant to Part II; or
- (b) discontinue administrative forfeiture proceedings against the subject property.

(2) If the director decides to discontinue administrative forfeiture proceedings pursuant to clause (1)(b), the director must give notice of that decision in accordance with subsection 10.3(3) to each person who received notice of the administrative forfeiture proceedings pursuant to subsection 10.3(1) and to each person who submitted a notice of dispute.

(3) Subject to section 35.1, if the director discontinues administrative forfeiture proceedings against the subject property pursuant to clause (1)(b), the director may later decide to apply for a forfeiture order against that property pursuant to Part II.

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“Forfeiture

10.8(1) If the director does not receive a notice of dispute by the deadline date, the subject property is forfeited to the Crown.

(2) The subject property mentioned in subsection (1) is forfeited as of the date a notice of administrative forfeiture proceedings is registered in the personal property registry pursuant to subsection 10.2(2).

(3) When the subject property has been forfeited pursuant to this Part, the director must prepare a notice of forfeiture, in the prescribed form, that confirms that the property has been forfeited to the Crown.

(4) The director must give a copy of the notice of forfeiture to the law enforcement agency that seized the subject property.

(5) When a law enforcement agency has received a notice of forfeiture, it must release the subject property to the asset manager.

“Failure to file notice of dispute

10.9(1) A person who claims to have an interest in subject property that was forfeited pursuant to this Part but who failed to file a notice of dispute in accordance with section 10.6 may apply to the court to set aside the forfeiture.

(2) A claimant must apply pursuant to subsection (1) within six months after the deadline date.

(3) In an application pursuant to subsection (1), the claimant must establish:

- (a) the nature of his or her interest in the subject property;
- (b) that he or she had a reasonable excuse for the failure to file a notice of dispute in accordance with section 10.6; and
- (c) that he or she made an application pursuant to this section as soon as was reasonably possible after learning of the forfeiture of the subject property.

(4) For the purposes of subsection (5), if a claimant is successful in an application pursuant to subsection (1):

- (a) the subject property is deemed not to have been forfeited to the Crown and must not be disposed of except in accordance with this Act; and
- (b) if the subject property has been disposed of, the proceeds, if any, realized on the sale or disposition of the property are deemed to be the property that is the subject of any forfeiture proceedings pursuant to clause (5)(a).

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(5) If a claimant is successful in an application pursuant to subsection (1), the director shall:

- (a) apply for a forfeiture order against the property pursuant to Part II; or
- (b) decide not to commence any further proceedings pursuant to this Act against the subject property.

(6) If the director decides not to commence any further proceedings pursuant to clause (5)(b), the director shall:

- (a) give notice to the law enforcement agency that seized the property stating that proceedings have been discontinued; and
- (b) either:
 - (i) direct the asset manager to release the property or, if any or all of the property has been disposed of, the proceeds, if any, realized on the sale or disposition of the property to an interested person if the director is satisfied that the person is entitled to the property; or
 - (ii) apply to the court for a determination of who is entitled to the property or, if any or all of the property has been disposed of, the proceeds, if any, realized on the sale or disposition of the property.

(7) In an application made pursuant to subclause (6)(b)(ii), the court may hear any party, consider any information or make any order it considers necessary to determine who is entitled to the property and direct the release of the property to that person.

(8) If the property that is the subject of an application pursuant to subsection (1) has been disposed of, the proceeds, if any, realized on the sale or disposition of the property are deemed for all purposes to be the fair market value of the property.

(9) Subject to section 35.1, if the director decides not to commence any further proceedings against the subject property pursuant to clause (5)(b), the director may later decide to apply for a forfeiture order against that property pursuant to Part II”.

Section 34 amended

5 Clause 34(2)(b) is amended by adding “or commencing administrative forfeiture proceedings” after “application for forfeiture”.

Section 35.1 amended

6 Section 35.1 is amended by striking out “an application pursuant to this Act cannot” and substituting “no application or administrative forfeiture proceeding pursuant to this Act may”.

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Section 40 amended

7 Section 40 is amended:

(a) in clause (b) by adding “or commencing administrative forfeiture proceedings” after “application for forfeiture”; and

(b) by adding the following clauses after clause (d):

“(d.1) for the purposes of Part II.1, prescribing agencies or organizations as law enforcement agencies;

“(d.2) for the purposes of clause 10.2(1)(d), prescribing the maximum fair market value of property;

“(d.3) prescribing forms for the purposes of this Act”.

Coming into force

8 This Act comes into force on proclamation.